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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,364	07/03/2003	Gerard Baglieri	22598	4824
535	7590	11/15/2004		
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900				EXAMINER BALSIS, SHAY L
			ART UNIT 1744	PAPER NUMBER

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/613,364	BAGLIERI, GERARD <i>TA</i>
	Examiner Shay L Balsis	Art Unit 1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 July 2003.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/3/03</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Bianchi (USPN 3493991).

Bianchi teaches a toothbrush comprising an inner handle (33) having an outer end and an outer handle (32) having an outer end remote from the inner handle part and an inner end juxtaposed with the inner handle outer end. There are bristles (1) on the outer handle outer end. There is a releasable joint (36) between the inner handle outer end and the inner handle inner end joining the handle parts together. The parts are constructed so as to open when a lateral force is applied to the bristles that exceeds a predetermined safe brushing force. The toothbrush further comprises a tether (37) located between the handle parts whereby the handle parts are still connected even when the joint opens. The tether is a flexible web that extends between the outer handle inner end and the inner handle outer end.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (USPN 4654922).

Chen teaches a toothbrush comprising an inner handle (10) having an outer end and an outer handle (6) having an outer end remote from the inner handle part and an inner end juxtaposed with the inner handle outer end. There are bristles (5) on the outer handle outer end.

There is a releasable ball and socket joint (7) between the inner handle outer end and the inner handle inner end joining the handle parts together. While the applicant may argue that the handle parts do not open and release due to exceeding a predetermined force, that limitation is intended use. The claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Alam (USPN 4251897).

Alam teaches a toothbrush comprising an inner handle (70) having an outer end and an outer handle (80) having an outer end remote from the inner handle part and an inner end juxtaposed with the inner handle outer end. There are bristles (110) on the outer handle outer end. There is a releasable ball and socket joint (88) between the inner handle outer end and the inner handle inner end joining the handle parts together. While the applicant may argue that the handle parts do not open and release due to exceeding a predetermined force, that limitation is intended use. The claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative

difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Brothers et al. (USPN 2083217).

Brothers teaches a toothbrush comprising an inner handle (1) having an outer end and an outer handle (2) having an outer end remote from the inner handle part and an inner end juxtaposed with the inner handle outer end. There are bristles (3, 4) on the outer handle outer end. There is a releasable joint (7) between the inner handle outer end and the inner handle inner end joining the handle parts together. The parts are constructed so as to open when a lateral force is applied to the bristles that exceeds a predetermined safe brushing force.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bianchi (USPN 3493991).

Bianchi teaches all the essential elements of the claimed invention however fails to teach that the tether is molded unitarily with the inner handle and outer handle. Bianchi teaches that the tether connects the two handle parts however is silent regarding how the tether is connected. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the tether of Bianchi unitarily molded with the handle parts since making parts integral

is a modification that has been considered to be within the level of ordinary skill in the art to follow. (*In re Larson*, 116 USPQ 443, 444).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L Balsis whose telephone number is 571-272-1268. The examiner can normally be reached on 7:30-5:00 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLB  
11/02/04

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